



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 12.11.2019

CORAM

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P.(PD)(MD)No.1721 of 2013

and

M.P.(MD)No.1 of 2013

K.Nallathambi .. Petitioner/3rd Respondent/3rd Defendant
Vs.

1.P.Senthilkumar .. 1st Respondent/Petitioner/Plaintiff
2.P.Mahalakshmi
3.Prabhu Kannan .. Respondents 2&3/Respondents 1&2/
Defendants 1&2

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.459 of 2013 in O.S.No.240 of 2010 on the file of the first Additional District Munsif, Trichy dated 04.07.2013.

For Petitioner : Mr.M.P.Senthil
For 1st Respondent : Mr.T.Vadivelan
For Respondents 2 & 3 : Exparte

ORDER

The above civil revision petition has been filed, challenging the order passed by the learned First Additional District Munsif, Trichy allowing the application filed by the plaintiff for impleading the second respondent as a party to the proceedings.

2.The plaintiff had filed a suit for declaring the sale deeds as null and void and for setting aside the sale deeds and for a consequential injunction. In the plaint, the plaintiff had contended that the plaintiff has executed a settlement deed on 07.02.2007 in favour of his wife. The third defendant/revision petitioner had taken out the defence that the suit was bad for non joinder of necessary parties, since the plaintiff's wife was not added as a party to the suit. When the trial was about to commence, the plaintiff was advised to file the implead petition. In the affidavit filed in support of the said petition, the plaintiff had contended that two of the earlier counsels had not advised him that he had to implead his wife as a party to the proceedings. It was only the



present counsel (third in number), who had informed him that his wife had to be added as a party to the proceedings in order to get a comprehensive decree as the settlement deed had been executed in her favour.

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3.The respondents 2 and 3/defendants 1 and 2 countered that the said application by stating that the petition was highly belated and filed only to fill up the lacunae. The defendants having taken up the plea of non-joinder. The impugned petition is an attempt to get over this. However, the learned first Additional District Munsif, Trichy by an order dated 04.07.2013, allowed the petition on costs. The said order is taken up for challenge before this Court.

4.Mr.M.P.Senthil, learned counsel appearing on behalf of the petitioner would contend that the settlement deed in favour of the plaintiff's wife had taken place much before the suit was filed. However, the second plaintiff was not impleaded as a party to the suit originally and even after the same was raised by the petitioner in his written statement. The application ought to have been rejected and not allowed.

5.Per contra, learned counsel for the respondents would submit that even before the trial is commenced, the said application has been taken. No prejudice would be caused to the petitioner, if the petition is allowed.

6.Heard the learned counsel and perused the papers.

7.From the perusal of the papers, it is seen that the plaintiff has not suppressed the settlement executed in favour of his wife. On contrary, in paragraph no.7 of the plaint, the plaintiff has clearly stated that on 07.10.2009, he has settled the suit property on his wife. The affidavit filed in support of the impugned petition would throw light on reasons as to why the application had not been taken earlier and the explanation appears plausible. The litigant has to be advised by the counsel regarding the legal nuances. It appears that the same has not been given to the plaintiff by his earlier two counsels and it was only the present counsel, who educated him and informed him about the fact that the second plaintiff had to be impleaded as a party to the proceedings and immediately, the application has been taken out.

8.Considering the fact that the trial was yet to commence, I do not find any infirmity in the order passed by the learned I Additional District Munsif, Trichy. In the result, the Civil Revision Petition stands dismissed and the order passed by the Court below is confirmed. The plaintiff shall pay a sum of Rs.2,000/- (Rupees Two Thousand only) as directed by the learned I Additional District Munsif, Trichy within a period of two weeks from the date



of receipt of copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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// True Copy //

Sub Assistant Registrar(CS)

Mrn

To

1.The First Additional District Munsif, Trichy.

+1 CC to Mr.M.P. SENTHIL, Advocate (SR-98057[F] dated 13/11/2019)

+1 CC to Mr.T.VADIVELAN, Advocate (SR-98245[F] dated 14/11/2019)

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